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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,883	09/29/2003	Xiaolei Yu	035642-0105	5369
22428	7590	06/08/2007		
FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER POHNERT, STEVEN C	
			ART UNIT	PAPER NUMBER
			1634	
			MAIL DATE	DELIVERY MODE
			06/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/671,883	Applicant(s) YU ET AL.	
	Examiner Steven C. Pohnert	Art Unit 1634	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-3,5-7,9 and 10.
Claim(s) withdrawn from consideration: 4 and 8.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

St. Pat

J. Goldberg
JEANINE A. GOLDBERG
PRIMARY EXAMINER
6/7/07

Continuation of 5. Applicant's reply has overcome the following rejection(s): The 112-1st paragraph written description rejection of Claim 4, as it no longer recites amino acid position 87, however amino acid 87 was the invention that was elected. Thus claim 4 is now withdrawn as directed to a non-elected invention.

Continuation of 11. does NOT place the application in condition for allowance because: The response of 5/27/2007 asserts that the previous amendment of claim 8, does not alter its scope only changes it style. This has been fully considered but is not found persuasive because applicant elected capture probe E.col_GyA87A1 in the reply to restriction of June 5, 2006. The amended claim requires the elected probe, but all of the probes recited in Table 1, and is thus beyond the scope of the elected invention.

The response of 5/27/2007 amends claim 4 to overcome the written description requirement. As the amendment no longer includes the amino acid position 87 of parC elected in reply to the restriction requirement of June 5, 2006, the claim is now drawn to a non-elected invention and is withdrawn from consideration.

The response of 5/27/2007 asserts that the instant claims are drawn to the use of a microarray that permits the generation of a limited number of capture probes. However the claims have comprising language that does not limit the claims to the steps or probes recited, but may include other probes. Thus the combined teachings of Wiegle, Chee and Alberts do render the claims obvious.

The response further asserts on page 6 of the 5/27/2007 response that Weigel suggests mutations to position 85 and 89 of gyrA without mentioning a relationship between mutations and the elected invention of codons 83 and 87. Figures 2 and 3 of Weigel are directed to demonstrating the similarity of gyrA from different species, thus showing how well conserved across prokaryotic species the gyrA gene is. Weigel's teachings of the homology across species suggests that this gene is evolutionarily conserved. The fact that Weigel teaches divergence at codons 85 and 89 is not relevant, because as the response asserts Weigel does not teach codons 85 and 89 play a role in quinolone resistance. Thus this line of argument is moot.

The response further asserts that Weigel teaches only mutations of Ser 83 and Asp 87. This argument has been fully considered but not found persuasive because Weigel teaches, "E.coli revealed single mutations at codon 83 of gyrA associated with low levels of resistance and double mutations (codons 83 and 87) with high levels of resistance" (see page 18, lines 1-34). Thus Weigel teaches that any mutation of the codon 83 and 87 would be of interest with respect to quinolone resistance in E.coli. Weigel teaches the importance of any mutation in codons 83 and 87 of gyrA in quinolone resistance in E.coli.

Further the response on page 7, that the teachings of Weigel would only be characterize Enterobacteriaceae from each other and different E.Coli strains from each other, but not determine quinolone resistance by mutations occurring only in E.coli. These arguments have been fully considered, but are not found persuasive because, the claims do not preclude the detection of any other prokaryotic species. Further the mutations taught by Weigel would allow for the identification of not only quinolone resistant strains of E.coli, but other prokaryotic species as well. As discussed above.

The response further asserts that Chee and Albert are silent as to the detection of quinolone resistance in E. Coli. This has been considered but is not found persuasive because Chee does teach the detection of antibiotic resistance in microorganisms as stated in the previous action. As quinolone resistance is an antibiotic resistance and E.coli are microorganisms, Chee thus inherently suggests detection of quinolone resistance in E.Coli. Further, the examiner is relying on Weigel for the teaching of quinolone resistance in E. coli, and the combination of Weigel, Chee, and Alberts does teach quinolone in E. Coli.